

UNITED STATES OF AMERICA  
MERIT SYSTEMS PROTECTION BOARD

JOSEPH G. CUTRUFELLO,  
Appellant,

v.

UNITED STATES POSTAL SERVICE,  
Agency.

DOCKET NUMBER  
NY0752890146-X-1<sup>1</sup>

DATE: DEC 14 1992

Joseph G. Cutrufello, Hampden, Maine, pro se.

Shirley A. Martin, Newark, New Jersey, for the agency.

BEFORE

Daniel R. Levinson, Chairman  
Antonio C. Amador, Vice Chairman  
Jessica L. Parks, Member

OPINION AND ORDER

This case is before the Board on a petition for enforcement of a final decision of the Board. *Cutrufello v. United States Postal Service*, MSPB Docket No. NY07528910146 (May 1, 1989). In that decision the administrative judge dismissed as settled Mr. Cutrufello's appeal of his removal from the position of Distribution Clerk. The initial decision became the final decision of the Board on June 5, 1989.

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<sup>1</sup> The docket number below was NY0752910433-C-1.

The appellant filed a petition for enforcement and the agency filed a response to the petition. The administrative judge issued a Recommendation in which she found, inter alia, that the agency was not in compliance with the settlement agreement because it did not show that it has removed from the appellant's medical records all evidence relating to the removal action. Both parties have submitted responses to the Recommendation.

#### ANALYSIS AND FINDINGS

The appellant contends that the agency has violated the agreement by keeping in his medical records a reference to the removal. He requests that the settlement agreement be nullified.<sup>2</sup>

Once a settlement agreement between an agency and an employee is accepted into the record, the Board retains jurisdiction to enforce the term of the agreement. *White v. United States Postal Service*, 46 M.S.P.R. 48 (1990). In a proceeding involving enforcement of a settlement agreement, the agency must produce relevant, material and credible evidence of its compliance with the agreement upon request

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<sup>2</sup> The appellant requests that the March 20, 1989, decision of the administrative judge who adjudicated the initial appeal be reinstated. The record reveals that on the above-mentioned date, the administrative judge advised the parties during a telephonic conference that based on the evidence then before her, the removal action would be reversed because the agency had not followed statutory procedures in effecting the adverse action. Initial Appeal file, tab 11. This was not a decision of the Board. Therefore, if the settlement agreement were set aside, this pronouncement of the administrative judge could not be reinstated as a decision. Accordingly, the appellant's request is denied.

by the appellant. The ultimate burden, however, is on the appellant, as the party seeking enforcement, to show that the agency failed to fulfill the terms of the agreement. *Fredendall v. Veterans Administration*, 38 M.S.P.R. 366, 371 (1988).

A settlement agreement is a contract between two parties the interpretation of which is a question of law. *White v. United States Postal Service*, 46 M.S.P.R. at 48. In construing a settlement agreement, the Board looks first at the terms of the agreement itself to determine the intent of the parties at the time that they contracted; words of agreement are of paramount importance in determining such intent. *Shafer v. Department of the Air Force*, 46 M.S.P.R. 164 (1990), *aff'd*, 935 F.2d 280 (Table) (1991).

If the parties include in a settlement agreement a provision that the agency will purge the employee's files of references to the appealed adverse action, the Board will enforce such a provision. *McWilliams v. United States Postal Service*, 48 M.S.P.R. 261 (1991). If the parties include a nondisclosure provision in the agreement, the Board will enforce it. *Soffer v. Department of the Army*, 44 M.S.P.R. 402, 404 (1990), *petition for enforcement dismissed*, 47 M.S.P.R. 414 (Table).

The settlement agreement in this case provided that the agency would "cancel appellant's removal and appellant [would] be placed in leave without pay status from May 12, 1988 until his return to duty with the Postal Service."

Initial Appeal file, tab 12. The appellant has not identified any provision of the agreement that requires the agency to expunge references to his removal from any files. The agency states that, although there was no agreement to expunge references to the removal from all files, it has expunged the removal notice from the appellant's official personnel folder and the supervisor's files. Agency Response to Recommendation.

The appellant contends, as he did before the administrative judge, that, because the agency had not removed references to the removal action from his medical records, he was not able to transfer to the Miami Postal Facility and he had difficulty in being hired by the Bangor Postal Facility. As discussed above, however, the agreement does not contain a provision requiring the agency to remove references to the removal action from the appellant's medical record. Nor is the agreement ambiguous on the issue of expungement. It is simply silent on that point. The Board will not imply a term into an agreement that is not ambiguous. *Kelley v. Department of the Air Force*, 50 M.S.P.R. 635, 641 (1991). "Rather, in construing the terms of a settlement agreement, the four corners of the agreement itself shall be examined to determine the parties' intent." *Id.* at 642. Therefore, the Board concludes that the agency did not breach the settlement agreement. *Mavronikolas v. United States Postal Service*, 53 M.S.P.R. 113, 116 (1992). Accordingly, any difficulty that the appellant encountered

in moving from one facility to another was not caused by breach of the settlement agreement by the agency.

Because it appears that the agency has complied with the final decision of the Board, the petition for enforcement is hereby DENIED. This is the final decision of the Board.

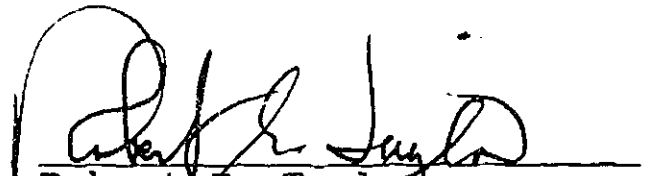
NOTICE TO THE APPELLANT

You have the right to request further review of the Board's final decision in your appeal. You may request the United States Court of Appeals for the Federal Circuit to review the Board's final decision if the court has jurisdiction. See 5 U.S.C. § 7703(b)(1). You must submit your request to the court at the following address:

United States Court of Appeals  
for the Federal Circuit  
717 Madison Place, NW.  
Washington, DC 20439

The court must receive your request for review no later than 30 calendar days after receipt of this order by your representative, if you have one, or receipt by you personally, whichever receipt occurs first. See 5 U.S.C. § 7703(b)(1).

FOR THE BOARD:

  
Robert E. Taylor  
Clerk of the Board

Washington, D.C.